

EPA Region 5 Records Ctr.



373372

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS DIVISION**

FILED
DEC 15 2009
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
BENTON OFFICE

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

CIVIL NO. 99-63-GPM

PHARMACIA CORPORATION)

(f/k/a Monsanto), *et al.*,)

Defendants.)

PHARMACIA CORPORATION (f/k/a Monsanto))
and SOLUTIA, INC.,)

CJRA Track "C"

Counterclaim Plaintiffs,)

v.)

UNITED STATES OF AMERICA, *et al.*,)

Counterclaim Defendants.)

PARTIAL CONSENT DECREE

TABLE OF CONTENTS

I.	BACKGROUND	1
II.	JURISDICTION AND VENUE	5
III.	PARTIES BOUND	5
IV.	DEFINITIONS	5
V.	STIPULATED JUDGMENT BY THE VILLAGE OF SAUGET	11
VI.	PAYMENT OF RESPONSE COSTS	11
VII.	FAILURE TO COMPLY WITH CONSENT DECREE	13
VIII.	COVENANTS BY THE UNITED STATES	15
IX.	CERTIFICATION BY SETTLING DEFENDANT VILLAGE OF SAUGET	16
X.	RESERVATIONS OF RIGHTS BY UNITED STATES	16
XI.	COVENANTS NOT TO SUE BY SETTLING DEFENDANTS AND SETTLING FEDERAL AGENCIES	17
XII.	EFFECT OF SETTLEMENT AND CONTRIBUTION PROTECTION	20
XIII.	SITE ACCESS	22
XIV.	ACCESS TO INFORMATION	22
XV.	RETENTION OF RECORDS	23
XVI.	NOTICES AND SUBMISSIONS	24
XVII.	RETENTION OF JURISDICTION	26
XVIII.	INTEGRATION/APPENDICES	26
XIX.	LODGING AND OPPORTUNITY FOR PUBLIC COMMENT	26
XX.	FINAL JUDGMENT	27
XXI.	SIGNATORIES/SERVICE	27

I. BACKGROUND

A. This is a Consent Decree among the Plaintiff United States, on behalf of the United States Environmental Protection Agency ("EPA"), Settling Defendants Pharmacia Corporation, Solutia Inc., Cerro Flow Products Company, ExxonMobil Corporation, and the Village of Sauget, and Counterclaim Defendant United States (collectively, the "Parties").

B. From 1901 to 1997, Pharmacia Corporation (formerly known as Monsanto Company and hereinafter referred to as "Pharmacia") owned and operated what came to be known as the Queeny Plant located in St. Louis, Missouri. From 1917 to 1997, Pharmacia owned and operated what came to be known as the Krummrich Plant in Sauget, Illinois.

C. In 1997, Pharmacia spun-off its chemical manufacturing business that included the Queeny and Krummrich plants, to Solutia Inc. ("Solutia"). Solutia is the current owner of the Krummrich plant and associated real property. Settling Defendants Solutia and Pharmacia entered into an indemnification agreement whereby Solutia assumed financial responsibility for certain existing environmental claims against Pharmacia including claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601 *et seq.*, with respect to, *inter alia*, the Sauget Area 1 Site (as defined below and depicted on the map in Appendix A).

D. In February, 2000, Monsanto Ag Company was incorporated as a wholly-owned subsidiary of Pharmacia. In March 2000, Pharmacia merged with Pharmacia & Upjohn Inc. and changed its name to Pharmacia Corporation. In March 2000, Monsanto Ag Company changed its name to Monsanto Company (hereinafter "New Monsanto"). Pharmacia Corporation was purchased by Pfizer Inc. in April 2003 and is maintained as a wholly-owned subsidiary of Pfizer Inc.

E. Pursuant to the September 1, 2000, Separation Agreement between New Monsanto and Pharmacia, New Monsanto indemnified Pharmacia for certain liabilities assumed by Solutia, including environmental liabilities related to the Sauget Area 1 Site, to the extent that Solutia fails to pay, perform, or discharge those liabilities.

F. The United States Environmental Protection Agency ("EPA") and the State of Illinois, through the Illinois Environmental Protection Agency, have been investigating the Sauget Area 1 Site since the early-1980s. In the Fall of 1995, EPA completed a CERCLA Removal action at Site G of the Sauget Area 1 Site, which consists of three closed landfills (Sites G, H, and I); two former surface impoundments (Site L); one flooded borrow pit (Site M); one filled borrow pit (Site N); and a stream known as Dead Creek. On September 9, 1998, EPA issued to twenty-six potentially responsible parties, including Pharmacia, Solutia, Cerro Flow Products Company ("formerly known as Cerro Copper Products Inc. and hereinafter referred to as "Cerro"), Mobil Oil Corporation (now known as ExxonMobil Oil Corporation and hereinafter

referred to as "ExxonMobil"), Paul Sauget, Sauget & Co. and the Village of Sauget, a "Special Notice of Liability for Sauget Area 1."

G. On January 21, 1999, EPA issued an Administrative Order on Consent ("AOC") to Solutia and Pharmacia requiring them to conduct an Engineering Evaluation and Cost Analysis ("EE/CA") for the Sauget Area 1 source areas (Sites G, H, I, L, M and N) and the impacted portions of Dead Creek, and to conduct a Remedial Investigation and Feasibility Study ("RI/FS") for Sauget Area 1 groundwater. Pharmacia and Solutia have undertaken investigation work under the AOC and continue to do so. EPA has overseen the work done under the AOC.

H. On June 21, 1999, EPA issued to Pharmacia and Solutia a Unilateral Administrative Order ("UAO") pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), requiring investigation and repair of Dead Creek culverts at the Sauget Area 1 Site. On May 31, 2000, EPA supplemented the UAO to include removal of contaminated sediments and soils from certain locations in and around Dead Creek, which order was amended on August 29, 2001, to include additional Dead Creek segments. The UAO, as supplemented, is referred to herein as the "Dead Creek UAO." Pharmacia and Solutia have undertaken work under the UAO, with EPA oversight, and continue to do so.

I. On January 9, 2003, EPA sent an Additional Work Letter to Pharmacia and Solutia, which required them to study Dense Nonaqueous Phase Liquid ("DNAPL") contamination at the Sauget Area 1 Site pursuant to the AOC, and to prepare a DNAPL Characterization and Remediation Study/Investigation ("Additional Work Letter").

J. The United States has incurred costs associated with the 1995 CERCLA Removal action and with overseeing work performed in accordance with the AOC, the Dead Creek UAO, and the Additional Work Letter. As of October 31, 2007, EPA has incurred at least \$4.3 million in Response Costs, as defined below, relating to the Sauget Area 1 Site and the Department of Justice has incurred at least \$3.4 million in Response Costs relating to the Sauget Area 1 Site.

K. This case commenced on January 28, 1999, when the United States, on behalf of EPA, filed a complaint against Pharmacia, Solutia, Cerro, and ExxonMobil, among others, pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607. The complaint sought to recover response costs incurred by EPA at Site G, part of the Sauget Area 1 Site, as defined herein. Counterclaims and third-party claims asserted by Pharmacia and Solutia expanded the scope of this case to include the entire Sauget Area 1 Site. On August 30, 2000, the United States, on behalf of EPA, filed an amended complaint pursuant to Section 107 of CERCLA, against, *inter alia*, Pharmacia, Solutia, Cerro, ExxonMobil, Harold Wiese, Wiese Planning and Engineering, Ruan Transport Corp., Paul Sauget, and the Village of Sauget. On November 12, 2003, the United States, on behalf of EPA, filed a Second Amended Complaint adding Sauget & Co. as a defendant and seeking recovery of all unreimbursed Past Response Costs, additional litigation expenses, and a declaration of liability for Future Response Costs incurred and to be incurred in

connection with the release or threatened release of CERCLA hazardous substances at the Sauget Area 1 Site.

L. The United States asserts that it has incurred and will continue to incur response costs at the Sauget Area 1 Site as a result of releases or threatened releases of hazardous substances at and from portions of the Sauget Area 1 Site and that Settling Defendants are liable for these costs under Section 107 of CERCLA, 42 U.S.C. § 9607.

M. On May 8, 2000, Pharmacia and Solutia brought counterclaims in this action against the United States of America, United States General Services Administration, and the United States Department of the Army, et al. ("Settling Federal Agencies"), pursuant to Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), seeking to recover certain costs incurred by Pharmacia and Solutia at the Site, and seeking a declaration as to the United States' liability for costs to be incurred in the future.

N. On October 28, 2003, the Court entered a judgment of liability (Court Docket No. 578) against the Village of Sauget.

O. On October 21, 2003, the United States and Defendants Pharmacia, Solutia, Cerro, ExxonMobil, Harold Wiese, Wiese Planning and Engineering and Ruan Transport Corp. entered into a Stipulation of Liability ("Stipulation") (Court Docket No. 555).

P. Pharmacia and Solutia stipulated to joint and several liability for certain Response Costs incurred and to be incurred by the United States as set forth in the Stipulation.

Q. Defendants Cerro, ExxonMobil, Harold W. Wiese, Wiese Planning & Engineering, and Ruan Transport Corp. stipulated to liability for Responses Costs incurred and to be incurred by the United States as set forth in the Stipulation.

R. Defendants Pharmacia and Solutia agreed to satisfy the liability of Defendants Harold W. Wiese, Wiese Planning & Engineering, Ruan Transport Corp. and others to the United States at the Sauget Area 1 Site pursuant to settlement agreements entered into with those Defendants.

S. On April 19, 2004, the Court entered a consent decree between the United States and Defendant Paul Sauget wherein Defendant Paul Sauget agreed to pay \$60,000 and stipulated that a judgment be entered against him in the amount of \$9,200,000, as to the United States' claims for response costs related to the Sauget Area 1 Site.

T. On December 17, 2003, Solutia filed a voluntary petition under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101-1330, in the United States Bankruptcy Court for the Southern District of New York under Case No. 03-17949 (PCB). The Court approved

Solutia's Plan of Reorganization on November 29, 2007. The Plan addresses Solutia's liabilities associated with the Sauget Area 1 Site. Solutia emerged from bankruptcy in February 2008.

U. Beginning in 1999, the Village of Sauget sought defense and indemnification for its potential Area 1 liabilities (and subsequently all of the other Sauget environmental actions) from its comprehensive general liability insurance carriers: ACE USA ("ACE"), The Home Insurance Company ("Home"), and United States Fidelity & Guaranty Company ("USF&G"). In November 2002, the Village filed a complaint alleging breach of contract and bad faith, and seeking declaratory judgment against all three insurance carriers in the St. Clair County, Illinois Circuit Court. *Village of Sauget v. ACE USA, et al.*, Case No. 02-MR-0240. Shortly after the complaint was filed, insurance regulators placed the Home into liquidation proceedings and the Home was dismissed from the Village's insurance proceeding, but the Village filed claims in the Home's liquidation proceedings. The Village reached a settlement with USF&G in July 2007. In November 2007, the St. Clair County, Illinois Circuit Court entered partial summary judgment in Case NO. 02-MR-0240 in favor of the Village and against ACE, declaring that ACE had breached its duty to defend the Village and is estopped from denying coverage. Subsequently, the Village reached a settlement with ACE. Section VI, paragraph 6 of this Consent Decree requires a payment of \$500,000.00 by the Village of Sauget to EPA, which will be paid from the proceeds of the USF&G settlement.

V. The United States has reviewed the Financial Information submitted by Settling Defendant the Village of Sauget to determine whether it is financially able to pay response costs that the United States has incurred and will incur at the Sauget Area 1 Site. Based upon this Financial Information, it appears that Settling Defendant the Village of Sauget has insufficient assets and cash-flow to pay the amount of its stipulated judgment in Paragraph 4 of this Consent Decree. Accordingly, the United States has determined that the Village of Sauget is able to pay only the amount specified in Paragraph 6 hereof.

W. Settling Federal Agencies do not admit any issue of fact or law or liability arising out of the transactions or occurrences alleged in any counterclaim asserted by Settling Defendants.

X. Settling Defendants by signing this Partial Consent Decree ("Consent Decree") do not admit to any issue of fact or law or liability other than as set forth in their respective stipulations filed on October 3, 2003, (Court Docket No. 555), and as determined in the October 28, 2003, judgment entered against the Village of Sauget (Court Docket No. 578).

Y. The objectives of the Parties in entering into this Consent Decree are to:

- (1) resolve the claims for Past Response Costs of the United States which have been alleged in the Second Amended Complaint against the Settling Defendants with regard to the Sauget Area 1 Site, as provided in this Consent Decree;
- (2) resolve the claims for Future Response Costs of the United States against the Defendant Village of Sauget with regard to the Sauget Area 1 Site; and
- (3) resolve the claims for Response Costs Against Settling Federal Agencies which have or could

have been asserted against the United States with regard to the Sauget Area 1 Site, as provided in this Consent Decree.

Z. The United States and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent Decree and the underlying Complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of any Settling Defendant under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "Additional Work Letter" shall mean the letter sent by EPA to Pharmacia and Solutia on January 9, 2003, requiring them to study DNAPL contamination at the Sauget Area 1 Site pursuant to the AOC, and to prepare a DNAPL Characterization and Remediation Study/Investigation.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

c. "Complaint" shall mean the Second Amended Complaint filed by the United States in this case on November 12, 2003.

d. "Consent Decree" shall mean this Partial Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

e. "Date of Entry" shall mean the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket after completion of the period of public notice and comment required by Section XIX.

f. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

g. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

h. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

i. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

j. "Financial Information" shall mean those financial documents identified in Appendix C.

k. "Future Response Costs" are all direct, indirect, and other costs of response actions, including costs for Removal or Remedial Actions, as defined in Sections 101(25) and 107 of CERCLA, 42 U.S.C. §§ 9601(25) and 9607, actions relating to Sauget Area 1 groundwater, and Oversight Costs, as defined herein, incurred by the United States (including, but not limited to, EPA, its authorized representatives and contractors, and DOJ) in connection with the Sauget Area 1 Site after October 31, 2007.

l. "Insurance Claims" shall mean any causes of action asserted, or which may be asserted, by the Settling Defendant Village of Sauget against any insurance carrier for indemnification, coverage or sums pursuant to the terms of any insurance policy, arising from the Sauget Area 1 Site or the Sauget Area 2 Site, including but not limited to the case of *Village of Sauget v. ACE USA*, Cause No. 02-MR-0240, St. Clair County (Illinois) Circuit Court, and any

claim against the Home Insurance Company in liquidation, but not including the amounts already recovered in settlement of claims against USF&G.

m. "Insurance Proceeds" shall mean 95% of the proceeds recovered (whether recovered before or after entry of this Consent Decree), after subtraction of attorney's fees or expenses incurred by or on behalf of Settling Defendant the Village of Sauget ("Expenses"), pursuant to: (i) any settlement of the Insurance Claims; or (ii) any judgment with respect to the Insurance Claims. Expenses shall not include attorney's fees or costs incurred in connection with the Village of Sauget's defense or settlement of either the claims brought in this action by the United States, Pharmacia or Solutia or its claim against USF&G, nor shall it include attorney's fees or expenses incurred by or on behalf of Paul Sauget or the Estate of Paul Sauget.

n. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

o. "Oversight Costs" are all costs, including but not limited to direct and indirect costs, that the United States, its employees, agents, contractors, consultants, and other authorized representatives incurred or will incur in overseeing or conducting work under any order issued pursuant to CERCLA or an agreement for the performance of a Removal or Remedial Action, and including those costs associated with EPA's oversight of the Dead Creek UAO and the Additional Work Letter. For the purposes of this Consent Decree only, the definition of Oversight Costs excludes those costs associated with EPA's oversight of the AOC, which are to be reimbursed by Pharmacia and Solutia under the AOC.

p. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

q. "Parties" shall mean the United States and Settling Defendants Pharmacia Corporation (f/k/a Monsanto), Solutia Inc., Cerro Flow Products (f/k/a Cerro Copper Products Co.) ("Cerro"), ExxonMobil Oil Corporation ("ExxonMobil"), and the Village of Sauget.

r. "Past Response Costs" shall mean all direct, indirect, and other costs of response actions, including costs for Removal or Remedial Actions, as defined in Sections 101(25) and 107 of CERCLA, 42 U.S.C. §§ 9601(25) and 9607, and past Oversight Costs as defined herein, incurred by the United States (including EPA, its authorized representatives and contractors, and DOJ) in connection with the Sauget Area 1 Site through October 31, 2007, plus accrued Interest on all such costs through such date.

s. "Plaintiff" shall mean the United States.

t. **"Remedial Action"** shall have the meaning provided by Section 101(24) of CERCLA, 42 U.S.C. § 9601(24).

u. **"Removal"** shall have the meaning provided by Section 101(23) of CERCLA, 42 U.S.C. § 9601(23).

v. **"Response Costs"** shall mean Past Response Costs and Future Response Costs.

w. **"Response Costs Against Settling Federal Agencies"** include Response Costs as defined herein and any other response costs relating to the Sauget Area 1 Site incurred or to be incurred by the United States or Settling Defendants, including any response costs incurred or to be incurred relating to the investigation of DNAPL contamination pursuant to the Additional Work Letter and the control or remediation of DNAPL contamination at the Sauget Area 1 Site. "Response Costs Against Settling Federal Agencies" shall not include response costs to be incurred by the United States, Settling Defendants, or any other person relating to the investigation and/or remediation of groundwater contamination that is not caused by DNAPL contamination at the Sauget Area 1 Site after October 31, 2007.

x. **"Section"** shall mean a portion of this Consent Decree identified by a Roman numeral.

y. **"Settling Defendants"** shall mean Pharmacia, Solutia, Cerro, ExxonMobil, and the Village of Sauget, and their successors and assigns, but only to the extent that the alleged liability of any such successor or assign is based on the alleged liability of the Settling Defendant or a predecessor of a Settling Defendant.

z. **"Settling Federal Agencies"** shall mean those departments, agencies, and instrumentalities of the United States identified in Appendix B, which are resolving any claims which have been or could be asserted against them (or against the United States on their behalf) with regard to the Sauget Area 1 Site as provided in this Consent Decree.

aa. **"Sauget Area 1 Site"** means the geographic area so named and identified by EPA, located within the corporate limits of the Village of Sauget, Illinois and extending into the adjoining Village of Cahokia, Illinois, and depicted generally on the map attached hereto as Appendix A. It includes the areas described in subparagraphs 3(aa)(1) through 3(aa)(7) of this Consent Decree as well as the areal extent of contamination in soils, sediment, surface water and groundwater released therefrom, except that, for the purposes of this Consent Decree, the Sauget Area 1 Site does not include the Sauget Area 2 Site, or soils, sediments, surface water, or groundwater of the Sauget Area 2 Site. Specifically, Sauget Area 1 Site contains the following source areas and creek segments:

(1) "Site G," depicted generally on the map attached hereto as Appendix A, consists of several different parcels of land encompassing approximately 5 acres of land, located south of Queeny Avenue, east of (and possibly under) the Wiese Planning & Engineering property, and north of a cultivated field in the Village of Sauget, and west of Dead Creek CS-B and all the areal extent of contamination in soils, sediments, surface water and groundwater released from Site G.

(2) "Site H," depicted generally on the map attached hereto as Appendix A, consists of approximately five to seven acres of land located south of Queeny Avenue, west of Falling Springs Road, and north and east of Site L in the Village of Sauget, Illinois, and all the areal extent of contamination in soils, sediments, surface water and groundwater released from Site H.

(3) "Site I," depicted generally on the map attached hereto as Appendix A, consists of approximately 19 acres of land located north of Queeny Avenue, west of Falling Springs Road and south of the Alton & Southern Railroad in the Village of Sauget, Illinois, and includes all the areal extent of contamination in soils, sediments, surface water and groundwater released from Site I.

(4) "Site L," as depicted generally on the map attached hereto as Appendix A, consists of approximately 4 acres of land and is located immediately east of Dead Creek CS-B and south of Queeny Avenue in the Village of Cahokia where two or more surface impoundments were formerly operated, and includes all the areal extent of contamination in soils, sediments, surface water and groundwater released from Site L. For purposes of this Consent Decree only, Site L is deemed to consist of two parts - a western part of Site L consisting of approximately 2 acres of land including a backfilled former surface impoundment area occupying approximately 7,600 square feet located near Dead Creek CS-B, as described in the June 2001 Draft of the EE/CA and RI/FS ("Western Part of Site L") and an eastern part of Site L consisting of approximately 2 acres of land including a former backfilled surface impoundment area that lies along the eastern boundary of Site L (the "Eastern Part of Site L").

(5) "Site M," as depicted generally on the map attached hereto as Appendix A, is a former sand mining pit located along the eastern side of Dead Creek CS-B south of Site L at the western end of Walnut Street in the Village of Cahokia, Illinois and includes all the areal extent of contamination in soils, sediments, surface water and groundwater released from Site M. At one time Site M was hydraulically connected to Dead Creek through an eight-foot opening at the southwest portion of the pit.

(6) "Site N," as depicted generally on the map attached hereto as Appendix A, consists of approximately 4 to 5 acres of land located along the eastern side of Dead Creek CS-C, south of Judith Lane and north of Cahokia Street in the Village of

Cahokia, Illinois, and all the areal extent of contamination in soils, sediments, surface water and groundwater released from Site N.

(7) "Dead Creek," which includes all the areal extent of contamination in soils, sediments, surface water and groundwater released from Dead Creek, is depicted generally on the map attached hereto as Appendix A. Dead Creek consists of the creek and associated wetlands stretching from the Alton & Southern Railroad at its northern end, flowing south through the Villages of Sauget and Cahokia for approximately 3.5 miles, and emptying into the Old Prairie du Pont Creek, which then flows approximately 2,000 feet west into a branch of the Mississippi River known as the Cahokia Chute. Dead Creek has been divided into various segments by EPA for the purpose of investigation and response action.

(a) "Dead Creek CS-A" was the northernmost segment of Dead Creek consisting of an approximately 1,800-foot long portion of Dead Creek that formerly ran from the Alton & Southern Railroad south to Queeny Avenue. Historically, CS-A and available downstream segments received direct wastewater discharges from industrial sources and served as a surcharge basin for the Village of Sauget municipal sewer collection system. In approximately 1975, the Queeny Avenue culvert, which allowed creek water to pass from CS-A to CS-B, was permanently blocked by the Village of Sauget.

(b) "Dead Creek CS-B" consists of an approximately 1,800-foot long portion of Dead Creek running from Queeny Avenue south to Judith Lane.

(c) "Dead Creek CS-C" consists of an approximately 1,300-foot long portion of Dead Creek running from Judith Lane south to Cahokia Street.

(d) "Dead Creek CS-D" consists of an approximately 1,100-foot long portion of Dead Creek running from Cahokia Street to Jerome Lane.

(e) "Dead Creek CS-E" consists of an approximately 4,300-foot long portion of Dead Creek running from Jerome Lane to the intersection of Illinois Route 3 and Route 157.

(f) "Dead Creek CS-F" consists of an approximately 6,500-foot long portion of Dead Creek running from Route 157 to the Old Prairie du Pont Creek which ultimately drains into the Mississippi River. A large wetland extends several hundred feet out from both sides of the creek and is included in CS-F. Old Prairie du Pont Creek is not included in CS-F and is not part of Dead Creek.

bb. "United States" shall mean the United States of America, including all of its departments, agencies, and instrumentalities, which includes without limitation EPA, the Settling Federal Agencies, and any federal natural resource trustee.

V. STIPULATED JUDGMENT BY THE VILLAGE OF SAUGET

4. Settling Defendant the Village of Sauget hereby stipulates that judgment shall be entered against it in the amount of \$6.5 million in settlement of the United States' claims under Section 107 of CERCLA, 42 U.S.C. § 9607, as set forth in the Complaint.

VI. PAYMENT AND REIMBURSEMENT OF RESPONSE COSTS

5. Pharmacia, Solutia, ExxonMobil and Cerro. Within thirty (30) Days after entry of this Consent Decree or on October 1, 2009, whichever is later, Settling Defendants Pharmacia, Solutia, ExxonMobil, and Cerro shall pay to the United States four million three hundred and fifty thousand dollars (\$4.35 million) in reimbursement of Past Response Costs.

6. The Village of Sauget. In satisfaction of the judgment entered against Settling Defendant the Village of Sauget, within thirty (30) Days after entry of this Consent Decree the Village of Sauget shall pay to the United States five hundred thousand dollars (\$500,000) in reimbursement of Past Response Costs, in accordance with the instructions set forth in Paragraph 7. In addition, the Village of Sauget shall pay any Insurance Proceeds in reimbursement of Future Response Costs. The Village of Sauget shall continue to pursue in good faith and to final judgment or settlement all Insurance Claims. Within five (5) business days after final judgment is entered in favor of the Village of Sauget or settlement is finalized with respect to an Insurance Claim, the Village of Sauget shall provide notice of such settlement to the United States by overnight mail to the addresses specified in Section XVI (Notices) of this Decree, together with documentation regarding: (1) the amount of all Insurance Proceeds; and (2) any reasonable attorney's fees or expenses incurred for pursuing the Insurance Claims. Within thirty (30) Days after receipt of payment from an insurance carrier in settlement or pursuant to a final judgment of an Insurance Claim, the Village of Sauget shall remit the Insurance Proceeds, after deduction of permissible Expenses, in accordance with instructions set forth in Paragraph 9. In the event that the Village receives payment from an insurance carrier in settlement or pursuant to a final judgment of an Insurance Claim prior to the entry of this Consent Decree, the Village of Sauget shall remit the Insurance Proceeds to the United States within thirty Days after the Date of Entry of this Consent Decree, after deduction of permissible Expenses, in accordance with instructions set forth in Paragraph 9.

7. Payments by the Settling Defendants shall be made by FedWire Electronic Funds Transfer ("EFT") to the DOJ in accordance with written instructions to be provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office for the Southern District of Illinois.

8. At the time of payment, Settling Defendants shall notify EPA and DOJ that payment has been made in accordance with Section XVI (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill Identification Number 054V, DOJ case number 90-11-2-06089, and the civil action number (99-63-GPM).

9. Special Account and Sub-accounts.

a. The total amounts to be paid by the four corporate Settling Defendants pursuant to Paragraph 5, and the total amount to be paid by the Settling Defendant the Village of Sauget for reimbursement of Past Response Costs pursuant to Paragraph 6, shall be deposited in the Sauget Area One Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Sauget Area 1 Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

b. Upon entry of this Consent Decree, EPA shall establish two new special accounts within the Hazardous Substance Superfund: the Sauget Area 1 Remediation Account and the Sauget Area 2 Remediation Account (the "Remediation Accounts"). The total amount of Insurance Proceeds to be paid to the United States pursuant to Paragraph 6 by the Settling Defendant the Village of Sauget shall be deposited, in equal amounts, into the Remediation Accounts.

c. As for Insurance Proceeds that have been or will be paid to the United States pursuant to the Consent Decree entered into with the Estate of Paul Sauget in this civil action, the first \$50,492 shall be deposited in the Sauget Area 1 Remediation Account, the next \$3,150,000 shall be deposited in equal amounts in the Sauget Area One Special Account and the Sauget Area Two Remediation Account, and all additional Insurance Proceeds shall be deposited in equal amounts into the Remediation Accounts.

d. Subject to the terms and conditions set forth in this Section and any future Remedial Design/Remedial Action ("RD/RA") Consent Decree to perform the remedy at Sauget Area 1, EPA shall make available funds in the Sauget Area 1 Remediation Account for disbursement to any Settling Defendant that enters into such RD/RA Consent Decree as partial reimbursement for performance of the Work in accordance with procedures to be established in that RD/RA Consent Decree. EPA shall disburse such funds from the Sauget Area 1 Remediation Account to any qualifying Settling Defendant in accordance with procedures set forth in a future RD/RA Consent Decree, including procedures for EPA review and approval of a complete and accurate written cost summary and certification of the necessary and appropriate costs for the work performed pursuant to the Consent Decree. If the Area 1 remedy is to be performed through multiple RD/RA Consent Decrees, EPA shall allocate the funds in the Sauget Area 1 Remediation Account between or among the parties performing the work under the Consent Decrees based on EPA's estimate of the costs of the work to be covered by each Decree. The parties performing the work under the involved Consent Decrees may provide EPA with their estimates of the costs. EPA will allocate monies from the Sauget Area 1 Remediation Account based on the percent of the total Sauget Area 1 cleanup each Consent Decree is

addressing. The Settling Defendants agree that EPA's allocation of such costs from the Sauget Area 1 Remediation Account shall not be subject to judicial review. In the event that no Settling Defendant enters into a qualifying RD/RA Consent Decree, or if such RD/RA Consent Decree is not entered by the Court, the entirety of the Sauget Area 1 Remediation Account shall be released and transferred into the Sauget Area One Special Account.

10. As soon as reasonably practicable after the Date of Entry of this Consent Decree, and consistent with Paragraph 10(a), the United States, on behalf of the Settling Federal Agencies, shall:

a. Pay to the EPA Sauget Area 1 Special Account within the EPA Hazardous Substance Superfund one million, one hundred twenty-five thousand dollars (\$1,125,000), to be retained and used to conduct or finance response actions at or in connection with the Sauget Area 1 Site, (or to be transferred by EPA to the EPA Hazardous Substance Superfund), in reimbursement of Response Costs Against Settling Federal Agencies.

b. If the payment to the EPA Sauget Area 1 Special Account required by Paragraph 10(a) above is not made within 90 Days after the Date of Entry, the appropriate EPA Regional Branch Chief may raise any issues relating to payment with the appropriate DOJ Assistant Section Chief for the Environmental Defense Section. In any event, if this payment is not made within 90 Days after the Date of Entry of this Consent Decree, EPA and DOJ have agreed to resolve the issue within 30 Days.

11. The Parties to this Consent Decree recognize and acknowledge that the payment obligations of Settling Federal Agencies under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that any Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

VII. FAILURE TO COMPLY WITH CONSENT DECREE

12. Interest on Late Payments. If any Settling Defendant fails to make any payment under Paragraphs 5 and 6 (Payment of Response Costs) by the required due date, or if the Settling Federal Agencies fail to make payment to EPA within 90 Days under Paragraph 10, Interest shall continue to accrue on the unpaid balance through the date of payment.

13. Stipulated Penalty.

a. If any amounts due under Paragraphs 5 and 6 are not paid by the required date, the Settling Defendant(s) that fails to make such payment by the required date shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 12, five hundred dollars (\$500) per Day for each Day that such payment is late.

b. Stipulated penalties are due and payable within thirty (30) Days after the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party(ies) making the payment, the site name, the EPA Region and Site/Spill ID Number 054V, DOJ Case Number 90-11-2-06089, and civil action number (99-63-GPM). The check (and any accompanying letter) shall be sent to EPA Region 5, Attention: Program Accounting and Analysis Section, P.O. Box 70753, Chicago, Illinois 60673.

c. At the time of each payment, the Settling Defendants shall also notify EPA and DOJ that payment has been made in accordance with Section XVI. Such notice shall reference the EPA Region and Site/Spill ID Number 054V, DOJ Case Number 90-11-2-06089 and civil action number (99-63-GPM).

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified the Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the Day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

14. If the United States brings an action to enforce this Consent Decree, the Settling Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

15. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of the Settling Defendants' failure to comply with the requirements of this Consent Decree.

16. The obligations of Settling Defendants Pharmacia and Solutia to pay the amount required in Paragraph 5 (\$4.35 million) to the United States under this Consent Decree are joint and several. The obligations of Settling Defendants ExxonMobil and Cerro to pay half of the amount required in Paragraph 5 (\$2.175 million) to the United States under this Consent Decree are joint and several. The reduced joint and several liability of Settling Defendants ExxonMobil and Cerro reflects a negotiated compromise and not an allocation of liability.

17. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment of EPA's Response Costs as required by Section VI or from performance of any other requirements of this Consent Decree.

VIII. COVENANTS BY THE UNITED STATES

18. Covenant Not to Sue Settling Defendants Pharmacia, Solutia, ExxonMobil and Cerro. Except as specifically provided in Section X (Reservations of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants Pharmacia, Solutia, ExxonMobil and Cerro pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Paragraph 5 of Section VI (Payment of Response Costs) and any amount due under Section VII (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants Pharmacia, Solutia, ExxonMobil and Cerro of their obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendants Pharmacia, Solutia, ExxonMobil and Cerro and does not extend to any other person.

19. Covenant Not to Sue Settling Defendant the Village of Sauget. Except as specifically provided in Section X (Reservations of Rights by United States), the United States covenants not to sue or take administrative action against Settling Defendant the Village of Sauget pursuant to: (1) Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), with regard to Response Costs; and (2) Section 106 of CERCLA, 42 U.S.C. § 9606, relating to the Sauget Area 1 Site. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Paragraph 6 of Section VI (Payment of Response Costs) and any amount due under Section VII (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant the Village of Sauget of its obligations under this Consent Decree, including but not limited to the pursuit of Insurance Claims and submission of Insurance Proceeds required by Paragraph 6. This covenant not to sue is also contingent upon the *completeness of the Financial Information provided to the United States by the Village of Sauget*, and subject to the reservation of rights in Section X with respect to the Village of Sauget's certification set forth in Section IX. This covenant not to sue extends only to Settling Defendant the Village of Sauget and does not extend to any other person.

20. Covenants to Settling Federal Agencies. In consideration of the payments that will be made by the Settling Federal Agencies, and except as specifically provided in Section X (Reservations of Rights by United States), EPA covenants not to take administrative action against the Settling Federal Agencies pursuant to: (1) Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), with regard to Response Costs Against Settling Federal Agencies; and (2) Section 106 of CERCLA, 42 U.S.C. § 9606, relating to the Sauget Area 1 Site. This covenant shall take

effect upon receipt by EPA of all payments required by Paragraph 10(a) of Section VI. This covenant is conditioned upon the satisfactory performance by Settling Federal Agencies of their obligations under this Consent Decree. This covenant extends only to Settling Federal Agencies and does not extend to any other person.

IX. CERTIFICATION BY SETTLING DEFENDANT THE VILLAGE OF SAUGET

21. Settling Defendant the Village of Sauget by its signature hereto, certifies that, to the best of its knowledge and belief, after thorough inquiry, it has:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or other information relating to its potential liability regarding the Sauget Area 1 Site since notification of potential liability by the United States or the filing of suit against it regarding the Sauget Area 1 Site, and that it has fully complied with any and all EPA requests for information regarding the Sauget Area 1 Site and the Village of Sauget's financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or "RCRA"), 42 U.S.C. § 6927; and

b. submitted to EPA Financial Information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time the Village of Sauget executes this Consent Decree.

X. RESERVATIONS OF RIGHTS BY UNITED STATES

22. The covenants set forth above do not pertain to any matters other than those expressly specified in Paragraphs 18 and 19 and the Covenants to Settling Federal Agencies by EPA in Paragraph 20. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants, and EPA and the federal natural resource trustees reserve, and this Consent Decree is without prejudice to, all rights with respect to:

a. the failure of Settling Defendants or the Settling Federal Agencies to meet a requirement of this Consent Decree;

b. as to Settling Defendants Pharmacia, Solutia, Cerro, and ExxonMobil only, for liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;

c. as to the Settling Federal Agencies only, for liability for response costs incurred or to be incurred by the United States that are not within the definition of Response Costs Against Settling Federal Agencies, and for administrative action by EPA under Section 106 of CERCLA, 42 U.S.C. § 9606;

d. as to Settling Defendants Pharmacia, Solutia, Cerro, and ExxonMobil only, liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;

e. criminal liability; and

f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

23. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action against Settling Defendant the Village of Sauget, or to commence a new action seeking relief other than as provided in this Consent Decree, if, within 10 years of the entry of this Consent Decree, the United States determines that the Financial Information provided by Settling Defendant the Village of Sauget, or the financial certification made by Settling Defendant the Village of Sauget in Paragraph 21 is false or, in any material respect, inaccurate as of the date of the entry of this Consent Decree. Any misrepresentation, misstatement or material omission by the Village of Sauget in the certification made in Section IX (Certification of Settling Defendant the Village of Sauget), upon written notice by the United States to the Village of Sauget, renders the covenant not to sue and the contribution protection provided by Paragraphs 19 and 34 of this Consent Decree null and void, and the Village of Sauget shall forfeit all payments made pursuant to this Consent Decree. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from the Village of Sauget's false or materially inaccurate information. Following the voiding of any covenant not to sue pursuant to this Paragraph, in any action brought by the United States against the Village of Sauget related to Sauget Area 1, the Village of Sauget shall not raise any defenses based in whole or in part on the time that elapsed between the entry of this Consent Decree and the commencement of such action by the United States, including but not limited to defenses based upon any statute of limitations, laches, waiver of estoppel, or lack of jurisdiction.

XI. COVENANTS NOT TO SUE BY SETTLING DEFENDANTS AND SETTLING FEDERAL AGENCIES

24. Settling Defendants Pharmacia, Solutia, ExxonMobil and Cerro covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, relating to Response Costs Against Settling Federal Agencies or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the response actions at the Sauget Area 1 Site for which the Response Costs Against Settling Federal Agencies were incurred, including any claim under the United States Constitution; the Tucker Act, 28 U.S.C. § 1491; the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended; or at common law; or

c. any claim against the United States, including any department, agency or instrumentality of the United States, pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Response Costs Against Settling Federal Agencies.

25. United States' Indemnity.

a. Settling Defendants Pharmacia and Solutia shall, upon the entry and approval of this Consent Decree, indemnify, hold harmless, and reimburse (but not defend) the United States for any costs related to any claims or causes of action (including without limitation any claims by EPA or any other person pursuant to Sections 107 and 113(f) of CERCLA, 42 U.S.C. §§ 9607 and 9613(f), or any other applicable provision of federal or state law, whether by statute or common law) asserted against the United States by any other person or entity and relating to any conditions at, on, or beneath the Sauget Area 1 Site (including any off-site contamination that has emanated or will emanate from the Sauget Area 1 Site) alleged to be attributable to the release, threat of release, storage, or disposal of hazardous substances, pollutants or contaminants by, on behalf of, or otherwise in connection with the Settling Federal Agencies. The requirements of this subparagraph shall not apply to claims asserted against the United States: (1) for damages to natural resources; and (2) for property damage or bodily injury, or fear of same, on account of alleged exposure to CERCLA hazardous substances other than claims arising from the alleged negligent or wrongful acts or omissions of Pharmacia and/or Solutia in performing response actions at the Sauget Area 1 Site.

b. The United States shall notify Pharmacia and Solutia in writing of any claim that is asserted or complaint that is filed against and served upon the United States relating to the Sauget Area 1 Site within 120 days of the United States receiving written notice of such claim or service of a complaint. DOJ shall represent the United States with regard to any such claims or litigation. Where the United States and Pharmacia and/or Solutia are defendants in the same action and are defending against the same claim(s), the United States agrees to provide Pharmacia and/or Solutia with a reasonable opportunity to discuss the possibility of jointly engaging expert witnesses. The United States further agrees not to settle any such claims or action without first notifying Pharmacia and/or Solutia of the United States' intent to settle any such action and providing Pharmacia and/or Solutia with a reasonable opportunity to discuss any proposed settlement with the United States.

26. Settling Defendant the Village of Sauget covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, relating to the Sauget Area 1 Site or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the response actions at or in connection with the Sauget Area 1 Site, including any claim under the United States Constitution; the Tucker Act, 28 U.S.C. § 1491; the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended; or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Sauget Area 1 Site.

27. Settling Federal Agencies hereby agree not to assert any direct or indirect claim for reimbursement from the Hazardous Substance Superfund through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law relating to the Sauget Area 1 Site. This covenant does not preclude demands for reimbursement from the Superfund of costs incurred by a Settling Federal Agency in the performance of its duties (other than pursuant to this Consent Decree) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300).

28. In the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Section VIII (Covenants by United States), Settling Defendant the Village of Sauget's covenant not to sue shall not be deemed to bar the assertion of any defenses otherwise available to the Village of Sauget under Section 107 of CERCLA, or claims that may be asserted by the Village of Sauget against parties other than the United States under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607, 9613.

29. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

30. Non-Exempt De Micromis Waiver. Settling Defendants agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Sauget Area 1 Site, including for contribution, against any person where the person's liability to Settling Defendants with respect to the Sauget Area 1 Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Sauget Area 1 Site, or having accepted for transport for disposal or treatment of hazardous substances at the Sauget Area 1 Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Sauget Area 1 Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

31. The waiver in Paragraph 30 shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Sauget Area 1 Site against such Settling Defendant. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Sauget Area 1 Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Sauget Area 1 Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of a response action or natural resource restoration at the Sauget Area 1 Site.

XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

32. Except as provided in Paragraphs 30 (Non-Exempt De Micromis Waiver) and 31, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraphs 30 and 31 (Non-Exempt De Micromis Waiver), the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Sauget Area 1 Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

33. The Parties agree, and by entering this Consent Decree this Court finds, that this settlement constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Settling Defendants Pharmacia, Solutia, ExxonMobil and Cerro are each entitled, as of the Date of Entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or as may be otherwise provided by law, for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree for purposes of this Paragraph as to Settling Defendants Pharmacia, Solutia, ExxonMobil and Cerro are Past Response Costs.

34. The Parties agree, and by entering this Consent Decree this Court finds, that this settlement constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Settling Defendant the Village of Sauget is entitled, as of the Date of Entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or as may be otherwise provided by law for "matters addressed" in this Consent Decree. For purposes of this Paragraph, the "matters addressed" in this Consent Decree as to Settling Defendant the Village of Sauget are Response Costs and all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Sauget Area 1 Site, by the United States or any other person, except for the State of Illinois; provided, however, that if the United States exercises rights under the reservations in Section VIII (Covenants by the United States), other than in Paragraphs 22.a (claims for failure to meet a requirement of the settlement), or 22.e (criminal liability), the "matters addressed" in this Consent Decree will no longer include those response costs or response actions that are within the scope of the exercised reservation.

35. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Federal Agencies are entitled, as of the Date of Entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or any other applicable law for "matters addressed" in this Consent Decree. For purposes of this Paragraph, the "matters addressed" in this Consent Decree as to Settling Federal Agencies are Response Costs Against Settling Federal Agencies and any response costs incurred or to be incurred by any other person relating to the Sauget Area 1 Site. For purposes of this Paragraph, the "matters addressed" in this Consent Decree do not include response costs relating to the investigation or remediation of non-DNAPL groundwater contamination at the Sauget Area 1 Site incurred after October 31, 2007.

36. Each Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify EPA and DOJ in writing no later than sixty (60) Days prior to the initiation of such suit or claim. Each Settling Defendant also shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify EPA and DOJ in writing within ten (10) Days after service of the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA and DOJ within ten (10) Days after service or receipt of any Motion for Summary Judgment, and within ten (10) Days after receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

37. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Sauget Area 1 Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by the United States set forth in Section VIII.

XIII. SITE ACCESS

38. If the Sauget Area 1 Site, or any other property where access is needed to implement response activities at the Sauget Area 1 Site, is owned or controlled by any of the Settling Defendants, such Settling Defendants shall, commencing on the Date of Entry of this Consent Decree, provide the United States and its representatives, including EPA and contractors, with access at all reasonable times to the Sauget Area 1 Site, for the purpose of conducting any response activity related to the Sauget Area 1 Site, including, but not limited to, the following activities:

- a. Monitoring, investigation, removal, remedial or other activities at the Sauget Area 1 Site;
- b. Verifying any data or information submitted to the United States;
- c. Conducting investigations relating to contamination at or near the Sauget Area 1 Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing response actions at or near the Sauget Area 1 Site;
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XIV(Access to Information); and
- g. Assessing Settling Defendants' compliance with this Agreement.

39. Notwithstanding any other provision of this Consent Decree, EPA retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XIV. ACCESS TO INFORMATION

40. Settling Defendants shall provide EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within their possession or control or that of their contractors or agents relating to the Sauget Area 1 Site.

41. Confidential Business Information and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the records submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Defendants that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such records without further notice to Settling Defendants.

b. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege in lieu of providing records, they shall provide Plaintiff with the following: (1) the title of the record; (2) the date of the record; (3) the name, title, affiliation (e.g., company or firm), and address of the author of the record; (4) the name and title of each addressee and recipient; (5) a description of the subject of the record; and (6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Sauget Area 1 Site shall be withheld on the grounds that they are privileged.

42. No claim of confidentiality or privilege shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Sauget Area 1 Site.

XV. RETENTION OF RECORDS

43. Until eight (8) years after the entry of this Consent Decree, each Settling Defendant shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to the Sauget Area 1 Site or the liability of any person under CERCLA with respect to the Sauget Area 1 Site, regardless of any corporate retention policy to the contrary.

44. After the conclusion of the eight (8)-year document retention period in the preceding Paragraph, Settling Defendants shall notify EPA and DOJ at least ninety (90) Days prior to the destruction of any such records, and, upon request by EPA or DOJ, Settling Defendants shall deliver any such records to EPA. Settling Defendants may assert that certain

records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiff with the following: (1) the title of the record; (2) the date of the record; (3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; (4) the name and title of each addressee and recipient; (5) a description of the subject of the record; and (6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Sauget Area 1 Site, and no document described in Paragraph 42 above, shall be withheld on the grounds that they are privileged.

45. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Sauget Area 1 Site since notification of potential liability by the United States or the filing of suit against it regarding the Sauget Area 1 Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6972.

46. The United States acknowledges that each Settling Federal Agency (1) is subject to all applicable Federal record retention laws, regulations, and policies; and (2) has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XVI. NOTICES AND SUBMISSIONS

47. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, the Settling Federal Agencies, and Settling Defendants, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-2-06089)
P.O. Box 7611
Washington, DC 20044-7611
or by courier to:
601 D Street NW, Rm 2121
Washington, DC 20004

Chief, Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-6-05886)
P.O. Box 23986
Washington, DC 20026-3986
or by courier to:
601 D Street NW, Suite 8000
Washington, DC 20004

As to EPA:

Thomas J. Martin
Associate Regional Counsel
Office of Regional Counsel (C-14J)
United States Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Leah Evison
Remedial Project Manager
Superfund Division (SR-6J)
United States Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Richard Hackley
Lead Accountant
Financial Management Division (MF-10J)
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604

As to the Settling Defendants:

As listed on the Signature Page for each Settling Defendant as the agent authorized to accept service on behalf of that party.

XVII. RETENTION OF JURISDICTION

48. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVIII. INTEGRATION/APPENDICES

49. This Consent Decree constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the Sauget Area 1 Site locus map.

“Appendix B” is the complete list of the Settling Federal Agencies.

“Appendix C” is the list of Financial Information provided by Settling Defendant the Village of Sauget.

XIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

50. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

51. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XX. FINAL JUDGMENT

52. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

XXI. SIGNATORIES/SERVICE

53. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

54. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

55. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.


SO ORDERED THIS 15th DAY OF Dec., 2009.

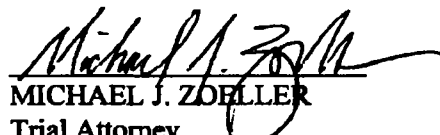

Hon. G. Patrick Murphy
United States District Judge


THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of U.S. v. Pharmacia Corp., et al, Civ. No. 99-63-GPM, relating to the Sauget Area 1 Site.

FOR THE UNITED STATES OF AMERICA

Date: 9/14/09


JOHN C. ZRUDEN
Acting Assistant Attorney General
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530



MICHAEL J. ZOELLER
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
(202) 305-1478
Fax (202) 514-8395



DAVID S. GUALTIERI
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986
(202) 514-4767
Fax (202) 514-8865

A. COURTNEY COX
United States Attorney
Southern District of Illinois

LIAM E. COONAN
Assistant United States Attorney
Office of the United States Attorney for the
Southern District of Illinois
Nine Executive Drive
Fairview Heights, IL 62208
(618) 628-3700

FOR THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY


RICHARD C. KARL
Director, Superfund Division
U.S. Environmental Protection Agency – Region 5
77 West Jackson Blvd.
Chicago, IL 60604


THOMAS J. MARTIN
Associate Regional Counsel
Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency – Region 5
77 West Jackson Blvd.
Chicago, IL 60604
(312) 886-4273

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of U.S. v. Pharmacia Corp., et al, Civ. No. 99-63-GPM, relating to the Sauget Area 1 Site.

FOR DEFENDANT PHARMACIA CORPORATION
By Solutia Inc, Its Attorney-in-Fact

Date: 9/14/09


[Names and address of Defendant's signatories]

Paul J. Beaman, III
Solutia Inc
575 Marryville Centre Drive, St. Louis, Mo 63141

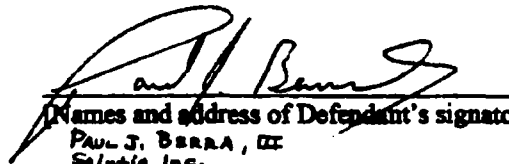
Agent authorized to accept service on behalf of above-signed Party:

Linda W. Tape, Esq.
Husch Blackwell Sanders LLP
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105-3441

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of U.S. v. Pharmacia Corp., et al, Civ. No. 99-63-GPM, relating to the Sauget Area 1 Site.

FOR DEFENDANT SOLUTIA INC.

Date: 9/14/09


[Names and address of Defendant's signatories]
PAUL J. BARRA, III
Solutia Inc.
576 Maryville Centre Drive, St. Louis, MO 63141

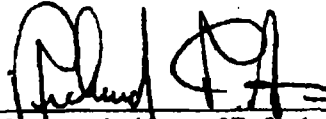
Agent authorized to accept service on behalf of above-signed Party:

Linda W. Tape, Esq.
Husch Blackwell Sanders LLP
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105-3441

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of U.S. v. Pharmacia Corp., et al, Civ. No. 99-63-GPM, relating to the Sauget Area 1 Site.

FOR DEFENDANT CERRO FLOW PRODUCTS, INC.
f/k/a CERRO COPPER COMPANY

Date: 9/11/09


[Names and address of Defendant's signatories]
Richard F. Ricci, Counsel for Cerro Flow Products, Inc.


Agent authorized to accept service on behalf of above-signed Party:

Richard F. Ricci, Esq.
Lowenstein Sandler PC
65 Livingston Avenue
Roseland, NJ 07068-1791

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of U.S. v. Pharmacia Corp., et al, Civ. No. 99-63-GPM, relating to the Sauget Area 1 Site.

~~EXXONMOBIL~~
FOR DEFENDANT ~~EXXONMOBIL~~ OIL CORPORATION

Date: 9/9/09


[Names and address of Defendant's signatories]
MICHAEL W SCHNECK
AGENT - ATTORNEY-in-FACT

Agent authorized to accept service on behalf of above-signed Party:

Craig H. Zimmerman, Esq.
McDermott Will & Emery
227 West Monroe Street
Chicago, IL 60606-5096

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of U.S. v. Pharmacia Corp., et al, Civ. No. 99-63-GPM, relating to the Sauget Area 1 Site.

FOR DEFENDANT VILLAGE OF SAUGET

Date: 8/11/09



RICHARD A. SAUGET, JR.
President, Board of Trustees
Village of Sauget
2897 Falling Springs Road
Sauget, Illinois 62206

Agent authorized to accept service on behalf of above-signed Party:

President, Board of Trustees
Village of Sauget
2897 Falling Springs Road
Sauget, Illinois 62206

Copy to:

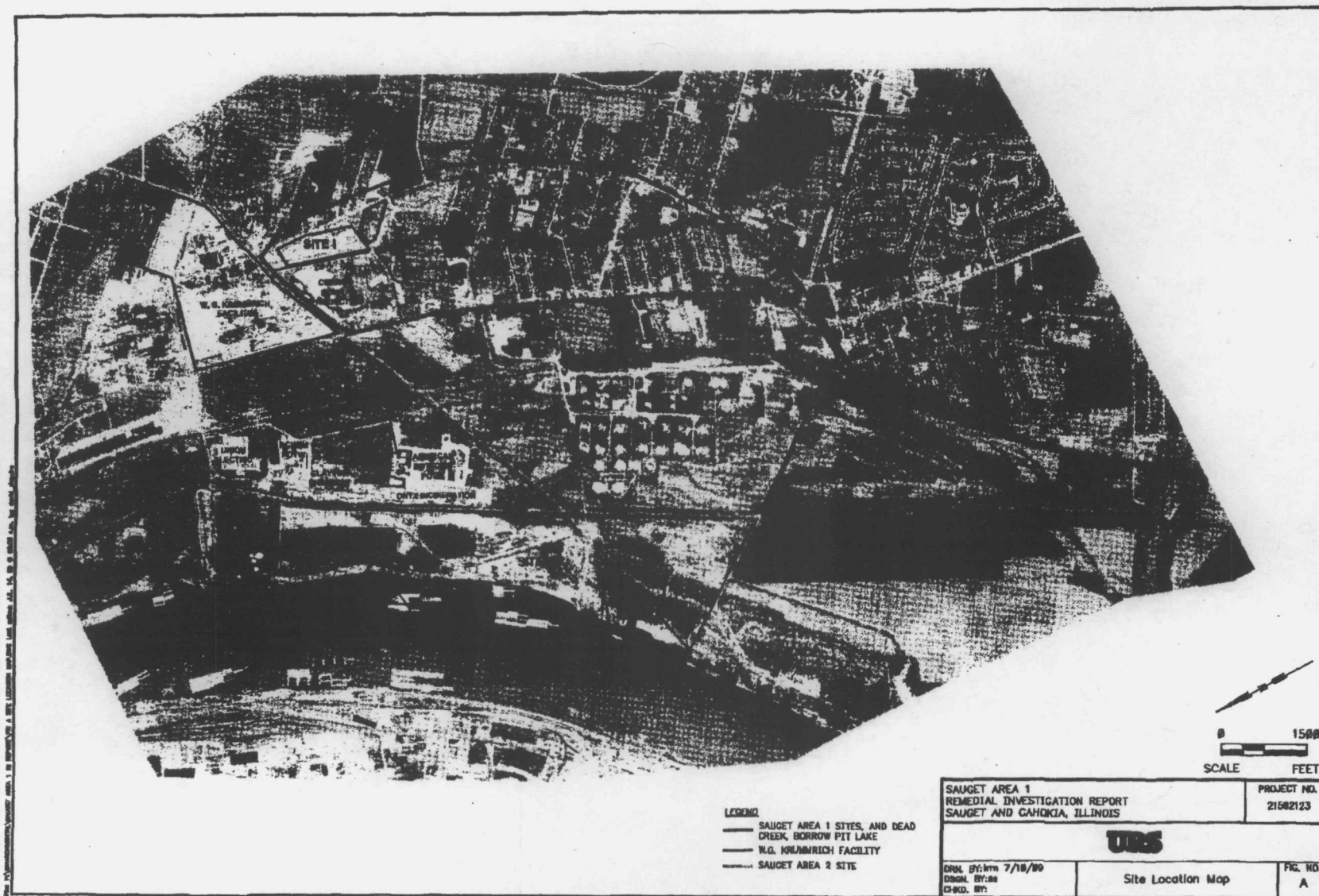
Thomas R. Ysursa, Esq.
Attorney at Law
5111 West Main Street
Belleville, IL 62226

APPENDIX A

Appendix A to the Consent Decree in the matter of United States v. Pharmacia Corp., et al., Civil No. 99-63-GPM (S.D. Illinois), relating to the Sauget Area 1 Site

**Map of Sauget Area 1 Site
Sauget and Cahokia, St. Clair County, Illinois**

[Attached]



APPENDIX B

Appendix B to the Consent Decree in the matter of United States v. Pharmacia Corp., et al., Civil No. 99-63-GPM (S.D. Illinois), relating to the Sauget Area 1 Site

List of Settling Federal Agencies

“Settling Federal Agencies” as defined in Paragraph 3(z) includes:

United States Department of the Army

United States Department of Commerce and its predecessor the War Production Board

United States Department of the Treasury

United States General Services Administration, its predecessors, successors and subsidiary corporations or entities, including but not limited to the Metals Reserve Company, the Defense Plant Corporation, and the Federal Works Agency

APPENDIX C

Appendix C to the Consent Decree in the matter of United States v. Pharmacia Corp., et al., Civil No. 99-63-GPM (S.D. Illinois), relating to the Sauget Area 1 Site

List of Financial Information for Village of Sauget Supporting Settlement Amount

Settling Defendant	Financial Information	Settlement Amount
V llage of Sauget	<ul style="list-style-type: none"> • Annual Financial Reports for FY 2004, 2005, 2006, 2007 & 2008; • Village's Appropriation Ordinances for FY 2006 through 2010; • Village's Tax Levy Ordinances for tax year 2008 & 2009; • Village tax rates for 1990 through 2008; • Village's bank statement as of June 30, 2009 for litigation-related funds; and • Identification of insurance coverage and regular updates on litigation and negotiations. 	\$500,000.00